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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**

In the Matter of

OCT - 4 2005

Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
(Sierra Vista and Tanque Verde, Arizona) )

MB Docket No. 05-245  
RM - 11264

Federal Communications Commission  
Office of Secretary

To: Office of the Secretary  
Attn: Assistant Chief, Audio Division, Media Bureau

**REPLY COMMENTS AND OPPOSITION TO COUNTERPROPOSAL**

CCR-Sierra Vista IV, LLC ("CCR"), by its attorneys, hereby files these Reply Comments and Opposition to Counterproposal in response to the Counterproposal submitted by Cochise Broadcasting, LLC ("Cochise") and Desert West Air Ranchers Corporation ("Desert West") (collectively, "Joint Petitioners") in the above-referenced proceeding. Joint Petitioners' Counterproposal alleges that CCR's Petition for Rulemaking is defective because CCR failed to provide a viable allotment site, impermissibly included certain stations in its loss area study and failed to provide a *Tuck* showing.

Cochise is the licensee of FM broadcast station KKYZ, channel 269A, Sierra Vista, Arizona and the permittee of 267C3, Corona de Tucson, Arizona, and the permittee of a new station on channel 279C1 at Lordsburg, New Mexico. Desert West is the licensee of FM broadcast station KRDX, Vail, Arizona. In their counterproposal Joint Petitioners propose:

- (1) Deletion of Channel 267C3 at Corona de Tucson, Arizona.
- (2) Allotment of Channel 267C3 to Tanque Verde, Arizona as that community's first local service.

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- (3) Deletion of Channel 253A at Vail, Arizona.
- (4) Allotment of Channel 253A to Corona de Tucson, Arizona.
- (5) Deletion of Channel 279C3 at Lordsburg, New Mexico.
- (6) Allotment of Channel 279A to Vail, Arizona.
- (7) Allotment of Channel 279C1 to Animas, New Mexico as a first service.
- (8) Allotment of Channel 228C1 to Virden, New Mexico as a first service.

## **1. CCR's Petition for Rulemaking is Not Defective.**

### **(a) CCR Proposes a Viable Allotment Site.**

Joint Petitioners claim that CCR's proposal "is technically unacceptable because it fails to provide a viable allotment site" lacks merit because there are several available sites outside of the boundaries of the Pusch Ridge Wilderness Area that CCR can use as a viable allotment site. In addition, despite Joint Petitioners' claim that a transmitter site cannot be located in a wilderness area and that they "have been unable to identify any towers within the wilderness area," there are at least four FCC licensed facilities currently operating in the Pusch Ridge Wilderness Area.<sup>1</sup>

Moreover, Joint Petitioners' focus on the limitations of constructing in wilderness areas is moot because there is a large, workable, non-short spaced area located in the Coronado National Forest outside the wilderness area that complies with the Rule 73.207 spacing requirements. The Commission routinely allows use of allocation points in National Forests for proposed transmitter sites. Indeed, two FM allotments included in Auction No. 37 had allocation reference coordinates in a National Forest. (The reference coordinates for Channel 290 Carmel Valley, California are located in the Las Padres National Forest and the reference coordinates for Channel 287, St. Paul, Arkansas

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<sup>1</sup> See call signs WPID654, WQCR580, WLO731, and WPNX283. See Engineering Statement, Figure 1 (attached).

are located in the Ozark National Forest.) CCR also notes that there are numerous existing broadcast facilities licensed within the Coronado National Forest.<sup>2</sup> Furthermore, there are numerous roads in the area proposed by CCR and the proposed facility can be built on a short, thirty foot pole with solar power. Finally, there is a process for obtaining authorizations for communication sites in National Forests.<sup>3</sup>

**(b) CCR's Loss Area Calculations are Correct.**

Joint Petitioners assert that CCR's loss area study is invalid because it "includes several impermissible stations in its loss area study." Joint Petitioners claim that CCR erroneously included foreign stations in its loss area study. Joint Petitioners' engineering cites *Nogales, Vail, and Patagonia, Arizona*, 16 FCC Rcd 20515 (2001), in support of its proposition that the Commission does not consider foreign stations when determining reception services in allotment proceedings. However, this decision is inconsistent with more recent Commission decisions pursuant to which the Commission includes foreign stations to determine the number of stations in a market. In fact, the Communications Act of 1934, as amended, specifically states that foreign stations are to be included in the determination of existing services.<sup>4</sup>

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<sup>2</sup> Broadcast facilities KGUN-TV Channel 9, KUAT Channel 6, KVOA Channel 4, KXGR Channel 46, KUAT(FM) Channel 213, KXZI(FM) Channel 217, all licensed to Tucson, have transmitter sites within the Coronado National Forest.

<sup>3</sup> See 43 U.S.C. §1761 (attached). See also, *Alden Communications Corp.*, 64 RR 2d 1612, 1614 (1988) (a willingness by the government to consider a request for use of land sufficient to provide a reasonable assurance of the site's availability); *Los Alamos, NM*, 7 FCC Rcd 3249 (1992).

<sup>4</sup> See *Telecommunications Act of 1996*, 11 FCC Rcd 12368 (1996) (foreign stations included in determining the number of stations in a market). See also, *Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620 (2003), *aff'd in part and remanded in part, Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372 (3d Cir. 2004), *stay modified on reh'g*, No. 03-3388 (3d Cir. Sept. 3, 2004) (foreign stations counted in relevant markets).

Joint Petitioners' loss area calculations are further flawed because they fail to consider noncommercial station KWRB, a permittee for Channel 215C2 at Bisbee, Arizona. In addition, Joint Petitioners' failure to include FM station KKYZ on the grounds that KKYZ was reallocated from Sierra Vista to Corona de Tucson is faulty because KKYZ currently is licensed to Sierra Vista. Both of these services should be considered in any loss area study.

**(c) CCR is Not Required to Provide a Tuck Showing**

The Commission properly concluded that a *Tuck* showing is not necessary because CCR's proposed Tanque Verde reallocation will cover only 8.6 percent of the Tucson urbanized area, far short of the 50 percent threshold requirement. Joint Petitioners mistakenly assert that since more than 50 percent of Tanque Verde is purportedly included within the Tucson urbanized area, a *Tuck* showing is necessary. The *Tuck* threshold, however, requires that the Tanque Verde reallocation cover more than 50 percent of the Tucson urbanized area, which CCR does not propose.<sup>5</sup>

**2. Joint Petitioners' Counterproposal is Defective.**

**(a) The Proposed First Service on Channel 228C1 to Virden, New Mexico.**

The Joint Petitioners proposal to allocate Channel 228C1 at Virden, New Mexico as that community's first local service must be rejected. The proposed allotment of 228C1 at Virden is not mutually exclusive with any of the proposals in the CCR Petition or in the Joint Petitioners' Counterproposal. As such, it must be dismissed.<sup>6</sup>

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<sup>5</sup> See *Nantucket, Mass.*, 20 FCC Rcd 3577 at ¶5 (2005). Joint Petitioners have provided a *Tuck* analysis for Tanque Verde, acknowledging that the Commission "may permit" CCR to rely on the *Tuck* showing submitted by Joint Petitioners. Counterproposal at page 3.

<sup>6</sup> See *Llano and Marble Falls, TX*, 13 FCC Rcd 25039 at ¶10 (1998) (a channel not mutually exclusive with the original NPRM cannot be accepted as a counterproposal).

**(b) The Proposed Allotment of Channel 279C1 at Animas, New Mexico.**

Animas, New Mexico is not a community for allotment purposes, and therefore, the proposal to allocate Channel 279C1 to Animas, New Mexico must be rejected. Animas, New Mexico, population 200, does not meet the threshold requirements of a community: it is not incorporated or a Census Designated Place and it does not have any of the attributes of a community. Where a community is not incorporated or listed in the U.S. Census, a proponent must show that the community is a “geographically identifiable population grouping.” Specifically, a proponent must show that the residents of the locality are regarded as a distinct group.<sup>7</sup> The local residents of Animas do not view themselves as a distinct geographic population. Although there are services located in Animas such as schools and a fire department, these services are located in Animas to serve a much larger geographical area and are not unique to Animas.<sup>8</sup>

**(c) The Proposal to Move Station KKYZ(FM) Corona de Tucson to Tanque Verde, Arizona.**

The proposal to reallocate Channel 267C3 from Corona de Tucson to Tanque Verde is flawed for several reasons. Cochise requests to change KKYZ(FM)’s community of license from Corona de Tucson to Tanque Verde under the guidelines set forth in *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7094 (1990) (“*Community of License Order*”),

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<sup>7</sup> *See, Beacon Broadcasting*, 2 FCC Rcd 3469 (1987); *see also, Kenansville, FL*, 5 FCC Rcd 2663 (1990).

<sup>8</sup> *See* Declaration of Stephanie Patton (attached). *See also, Reeder v. FCC*, 275 U.S. App. D.C. 199 (1989) (must demonstrate that establishments in a community are aimed primarily at local residents not the wider geographic area).

which states that a station may change its community of license without subjecting the license to other expressions of interest if, *inter alia*, the proposed allotment is mutually exclusive with the current allotment. KKYZ currently is licensed on Channel 269A at Sierra Vista, Arizona. KKYZ's licensed facility on Channel 269A at Sierra Vista, Arizona does not conflict with the use of Channel 267C3, Tanque Verde as proposed by Cochise. Cochise attempts to create mutual exclusivity by its use of Channel 267C3 at Corona de Tucson stating that "the proposed use of Channel 267C3 at Tanque Verde is mutually exclusive with the current use of 267C3 at Corona de Tucson." Counterproposal at 5. However, Cochise only holds a construction permit for Channel 267C3, Corona de Tucson, and is not licensed to operate from that community. Any mutual exclusivity must be gauged from its licensed facility on Channel 269A at Sierra Vista. Accordingly, there is no mutual exclusivity for Cochise's proposed use of channel 367C3 at Tanque Verde.

Cochise is attempting to use its unbuilt authorization as a way to claim that its current licensed facility should be able to move to Tanque Verde on a channel which is not mutually exclusive with its current operation. This is clearly not the intent of the *Community of License Order*. To interpret the *Community of License Order* to allow a station to use either its permitted site or licensed site to claim mutual exclusivity for purposes of a city of license move is an abuse of Commission process. Under Cochise's proposed reallocation, a licensed facility would be better off with outstanding adjacent channel construction permits in the hope that it can piggy back on another rulemaking or simply daisy chain its way to a community of license that it otherwise would not be entitled to serve. Just as rulemaking proponents cannot claim a proposal is fully spaced to a short spaced licensed facility because the licensee is the permittee of a site that is fully spaced, so too should a party seeking to change its city of license be required to do so based on its licensed facility,

not the facility for which it has a construction permit.<sup>9</sup>

Also troublesome is the fact that Cochise intends to substitute a Class A facility in Corona de Tucson in lieu of the Channel 267C3 facility permitted in Corona de Tucson. Under such circumstances, the loss area should be calculated in determining the benefits of such a move.

**(d) Other Deficiencies**

As more particularly noted in the attached Engineering Statement, Joint Petitioners have proposed allotment coordinates for Tanque Verde, Corona de Tucson, and Vail, Arizona that are short spaced to Mexican allotments and stations. The proposal for Tanque Verde requires a null depth of 15.85 dB which exceeds the 15 dB limit set forth in 73.316 of §1.4.1 of the U.S. Mexican Agreement. Furthermore, Joint Petitioners use of gain calculations based on omni-directional facilities in light of the short spacing is inappropriate.

In addition, the proposed allocation points for Tanque Verde, and Corona de Tucson, Arizona and Virden, New Mexico violate Rule 73.315 which requires that an antenna location be chosen to provide line of sight to the principal community of license to be served, and in no event should there be a major obstruction. In each of the three referenced proposals, there is a significant terrain obstruction between the allotment coordinates proposed and the community of license.

**3. Conclusion.**

Contrary to Joint Petitioners assertions, CCR's proposal is technically acceptable and correct. CCR has demonstrated the availability of several viable allotment sites. Furthermore, its loss area calculations include stations that are properly considered. Finally, CCR is not required to provide a

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<sup>9</sup> See generally, *North Port, et. al., AL*, 17 FCC Rcd 16227 at ¶4 (2002) ("it is our policy not to accept rulemaking proposals that are contingent on the licensing of facilities set forth in an outstanding construction permit"). See also, *Cut and Shoot, TX*, 1 FCC Rcd 16383 (1996). See Engineer's Statement (attached).

*Tuck* showing since it proposes to provide service to far less than 50% of the Tucson urbanized area.

Joint Petitioners' Counterproposal is defective. Joint Petitioners propose to provide first service on Channel 228C1 to Virden, NM and on Channel 279C1 at Animas, NM. The Virden proposal is not mutually exclusive with the Notice of Proposed Rulemaking and must be rejected. Furthermore, Animas, NM is not a community for allotment purposes. The proposal to move station KKYZ from Corona de Tucson to Tanque Verde, AZ is improper and in violation of the Community of License Order because the proposal to allocate Channel 267C3 to Tanque Verde is not mutually exclusive with its licensed authorization in Sierra Vista on Channel 269A. Furthermore, Joint Petitioners' proposal to substitute Channel 253A at Corona de Tucson for Channel 267C3 results in a significant loss of service.

Wherefore, CCR respectfully requests the Commission grant its proposal and deny the Counterproposal filed by Joint Petitioners.

Respectfully submitted,

**CCR-SIERRA VISTA IV, LLC**

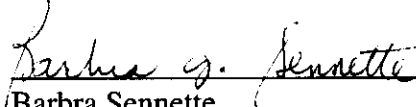
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Its Attorneys

October 4, 2005

**Certificate of Service**

I, Barbra Sennette, a secretary at the law firm of Drinker Biddle & Reath LLP, certify that on this 4<sup>th</sup> day of October 2005 I caused the foregoing *Reply Comments and Opposition to Counterproposal* to be served by first-class mail, except where hand delivery is indicated, on the following:

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\_\_\_\_\_  
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**ENGINEERING STATEMENT**  
**PREPARED IN SUPPORT OF**  
**OPPOSITION TO COUNTERPROPOSAL**  
**CCR-SIERRA VISTA IV, LLC**  
**MB DOCKET NO. 05-245 RM-11264**  
**SIERRA VISTA AND TANQUE VERDE, ARIZONA**

**OCTOBER 2005**

**ENGINEERING STATEMENT  
PREPARED IN SUPPORT OF  
OPPOSITION TO COUNTERPROPOSAL**

**CCR-SIERRA VISTA IV, LLC  
MB DOCKET NO. 05-245 RM-11264  
SIERRA VISTA AND TANQUE VERDE, ARIZONA**

**OCTOBER 2005**

**SUMMARY**

The following engineering statement has been prepared on behalf of **CCR-Sierra Vista IV, LLC (CCR)**. CCR filed a Petition for Rulemaking to amend the Table of Allotments to delete Channel 265A at Sierra Vista, Arizona and add Channel 265A at Tanque Verde, Arizona as now specified in MM Docket No. 05-245, RM-11264.

On September 19, 2005, a counterproposal was filed by Cochise Broadcasting, LLC and Desert West Air Ranchers Corporation (Cochise & DWAR). This statement addresses the engineering issues raised in the counterproposal.

The Cochise & DWAR Counterproposal filing will be analyzed in some detail in this statement. In summary form, the counterproposal alleges that the CCR Petition For Rule Making is defective. CCR will show this to be clear error. The counterproposal offers six amendments to the FM Table Of Allotments. CCR will demonstrate why it believes that the amendments should be dismissed for failure to meet Section 307b criteria and domestic and foreign allocation Rules and Treaties.

**SUMMARY OF COUNTERPROPOSAL ANALYSIS OF CCR DEFECTS**

In its counterproposal, Cochise & DWAR allege the following deficiencies in the CCR Petition for Rulemaking:

1. There is no suitable transmitter site at which the allotment can be made. The allotment coordinates are located in the Pusch Ridge Wilderness area and the Coronado National Forest and are unsuitable for tower construction.

2. CCR's loss areas study is inaccurate because it includes KKYZ as licensed and includes Mexican stations.
3. CCR's Petition omitted a "Tuck" analysis which is required.

**SUMMARY OF COCHISE & DWAR COUNTERPROPOSAL**

1. Cochise & DWAR propose the following amendments to the Table of Allotments.

KKYZ Sierra Vista, AZ

Delete CH 269A at Sierra Vista, AZ

Add CH 267C3 at Tanque Verde, AZ

KRDX Vail, AZ

Delete CH 253A, Vail, AZ

Add CH 253A, Corona de Tucson, AZ

NEW Lordsburg, NM

Add CH 256C, Lordsburg, NM

NEW Vail, AZ

Delete CH 279C3, Lordsburg, NM

Add CH 279A, Vail, AZ

NEW Virden, NM

Add CH 228C1, Virden, NM

NEW Animas, NM

Add CH 279C1, Animas, NM

2. Cochise & DWAR proffer the following public interest benefits:

KKYZ CH 267C3, Tanque Verde, AZ

Gain: 307,293 persons

Loss: All loss area receives a minimum of five other aural services.

KRDX CH 253A, Corona de Tucson, AZ

Gain: 0 persons

Loss: 0 persons

NEW CH 279A, Vail, AZ  
Gain: 2,205 persons  
Loss: All loss area receives a minimum of five other aural services.

NEW CH 279C1, Animas, NM  
Gain: Not specified or unclear

NEW CH 228C1, Virden, NM  
Gain: Not specified or unclear

NEW CH 256C, Lordsburg, NM  
Gain: Not specified or unclear

### **CCR RESPONSE TO COCHISE & DWAR SUGGESTED DEFICIENCIES**

CCR first addresses the counterproposal argument that there are no suitable transmitter sites available. The counterproposal states that the site is located in the Pusch Ridge Wilderness area, that a transmitter site cannot be located in the wilderness area and that "We have been unable to identify any towers within the Wilderness Area". A brief, unexhaustive, review of the FCC Wireless Bureau database revealed four FCC licenses in the Pusch Ridge Wilderness area. The call signs are WPID654, WQCR580, WLO731 and WPNX283 and their locations are shown on Map Figure 1 in relation to the Pusch Ridge Wilderness area boundary. It is clear that transmitter sites are allowed in the Wilderness area.

In sensitive environments such as a wilderness area, it is common practice to mount antennas on wooden poles as close to the ground as possible in keeping with FCC OET-65 guidelines. Power is supplied by solar or fuel cells so that commercial power is not required. Road access is not required as lightweight equipment is used that can be hiked into the proposed site. In short, there is no merit to the argument that it is not possible to construct in the Pusch Ridge Wilderness area.

However, the Wilderness area argument is moot given the large non short spaced site area available which complies with 73.207 spacing requirements. The proposed CCR coordinates are located a mere 1.2 miles from the nearest edge of the Wilderness area. There is ample site area in the Coronado National Forest as shown on Map Figure 2. Numerous precedents exist for broadcast use of sites located on National Forest land.

From an allocations standpoint it is noted that in recent FM Auction No. 37 at least two FM Channels had allocation reference coordinates in a National Forest. Both of these channels were bid for and 301 applications are pending.

The two sites referenced above are:

CH 290 Carmel Valley, CA – Los Padres National Forest

CH 287 St. Paul, AR – Ozark National Forest

To prevent question about the presence of broadcast transmitter sites in the Coronado National Forest, a list of existing broadcast stations which have a licensed site inside the National Forest is found below. It is noted that there are numerous RF transmission facilities licensed by the Wireless Bureau in the National Forest as well. The broadcast sites listed below are plotted on Map Figure 3, attached.

KGUN TV CH9 Tucson, AZ  
KUAT CH 6 Tucson, AZ  
KVOA CH4 Tucson, AZ  
KXGR CH 46 Tucson, AZ  
KUAT FM CH213 Tucson, AZ  
KXCI CH 217 Tucson, AZ

CCR has identified several alternate coordinates which are suitable for the proposed allotment of CH 265A at Tanque Verde which are located inside the Coronado National Forest and outside the Pusch Wilderness area. The coordinates are located on high natural elevations near the General Hitchcock Highway, the access highway to the existing broadcast sites, allowing full Class A facilities which meet 73.207 requirements with good Longley-Rice 70 dBu service to Tanque Verde. CCR proposes to amend its Petition to substitute one of the sites. The proposed substitute allotment coordinates are:

N.L. 32-20-00.5, W.L. 110-42-48  
(See allocation study Exhibit I)

The counterproposal states that CCR's other services analysis counts foreign stations in error. CCR disagrees. In the Telecommunications Act of 1996, 2 CR376, 11 FCC Rcd 12368, 61 FR 10689, March 8, 1996, it was stated that foreign stations should be considered in a determination of existing services.

The counterproposal also states that CCR wrongly included the CH 269C2 CP facility for KKYZ in Sierra Vista, Arizona in its other services analysis because there is a new allotment at Corona de Tucson which supersedes the CH 269C2 allotment. CCR disagrees for the following reasons. At the time that the CCR Petition For Rulemaking was filed, KKYZ held a CP for CH 269C2 at Sierra Vista. The CP for CH 267C3 at Corona De Tucson was not granted until September 16, 2005. Since KKYZ has been hop scotching over the allocations board, and has failed to file a license application for any facility other than CH 269A at Sierra Vista, AZ, it is believed that CCR's use of the KKYZ CP for Class C2 operation was correct. The Table of Allotments still has a reservation for CH 269C1 at Sierra Vista for KKYZ. Absent KKYZ licensing a facility for Corona de Tucson, it is believed that the correct facility to use for other services analysis is the CH 269C1 allotment which, if employed, would support CCR's submission that the KKYZ allotment duplicates 100% of the KZMK loss area.

**COCHISE & DWAR FAILURE TO PROVIDE CORRECT AREA  
AND POPULATION ANALYSIS DATA**

Cochise & DWAR propose allotment coordinates with severe short spacings to Mexican allotments and stations. The short spacings and ERP limits are taken directly from the Cochise & DWAR counterproposal.

**CH 267C3 TANQUE VERDE, AZ**

Sasabe, So, MX CH 266B

Required separation	=	145 kM
Proposed separation	=	194.54 kM
ERP proposed	=	0.65 kW (null 15.85 dB)

Aqua Prieta, So, MX CH 267B

Required separation	=	211 kM
Proposed separation	=	148.53 kM
ERP proposed	=	2.77 kW (null 9.55 dB)

**CH 253A CORONA, DE TUCSON, AZ**

XHSAP Fmagua Prieta, So, MX CH 253B  
Required separation = 178 kM  
Proposed separation = 122.77 kM  
ERP proposed = 0.847 kW (null of 8.5 dB)

**CH 279A VAIL, AZ**

XHRZ, Nogales, So, MX CH 278B  
Required separation = 125 kM  
Proposed separation = 79.04 kM  
ERP proposed = 0.19 kW (null of 15 dB)

Cananea, So, MX CH 280B  
Required separation = 125 kM  
Proposes separation = 113.53 kM  
ERP proposed = 6 kW (null of 0 dB)

As can be seen above, the counterproposal is based on the supposition that the best interests of the United States are had by proposing severely restricted allotments to Mexico for CH 267C3 at Tanque Verde, CH 253A at Corona, de Tucson and CH 279A at Vail. The proposal for Tanque Verde requires a null depth of 15.85 dB which exceeds the 15 dB limit set forth in 73.316 and Section 1.4.1 of the U.S. Mexican Agreement.

A review of the Gain and Loss Area Study Exhibits submitted by Cochise & DWAR shows 60 dBu contours of constant radius as would be expected for omnidirectional facilities. To submit gain and loss area numbers based on omnidirectional facilities serves no purpose other than to put inflated, incorrect, gain area data into the record. The counterproposal contains no accurate gain and loss data and the submitted data is clearly in error being based entirely on omnidirectional facilities.

**COCHISE & DWAR 73.315 VIOLATION**

Section 73.315 of the Commission's Rules specifies that the antenna location should be chosen so that line-of-sight can be obtained from the antenna over the principal city to be served and in no event should there be a major obstruction in this path.

An analysis of each of the five new allotment reference coordinates was made to determine the RC AMSL required for a facility of full HAAT. That RC AMSL was used to analyze line-of-sight to the central reference coordinates for each community. The data employed is listed below:

<u>Allotment</u>	<u>Coordinates Community</u>	<u>RC AMSL</u>	<u>Community Name</u>
32-08-45 110-46-56	32-15-06 110-44-12	976.6 m HAAT 100 m	Tanque Verde, AZ <i>Figure 4</i>
31-55-39 110-37-57	31-57-55 110-46-30	1350.6 m HAAT 100 m	Corona de Tucson, AZ <i>Figure 5</i>
31-58-16 110-35-59	32-02-52 110-42-4	1303.0 m HAAT 100 m	Vail, AZ
31-56-50 108-28-45	31-56-56 108-48-24	1707 m HAAT 299 m	Animas, NM
32-24-12 108-53-59	32-41-13 109-00-05	1606.1 m HAAT 299 m	Virden, NM <i>Figure 6</i>

By inspection of the attached terrain profiles, *Figures 4-6*, it is seen that the Tanque Verde, Corona de Tucson and Virden allotments violate 73.315 criteria as there is a significant terrain obstruction between the allotment coordinates proposed and the communities of license.

#### **COUNTERPROPOSAL FAILURE TO MEET CHANGE OF COMMUNITY OF LICENSE CRITERIA**

The FCC has established specific guidelines regarding modification of FM and TV authorizations to specify a new community of license as found in 4 FCC Rcd 4870 (1989), recons. Granted in part, 5 FCC Rcd 7094 (1990). The Cochise & DWAR counterproposal fails to comply with the provision that the proposed allotment is mutually exclusive with the current allotment based on licensed facilities. The counterproposal for CH 267C3 is mutually exclusive with the CCR proposal for CH 265A due to the short spaced relationship of Channel 267C3 at Tanque Verde chosen by Cochise & DWAR. CH 267C3 is a second adjacent channel to CCR's proposed use of CH 265A and is only short spaced

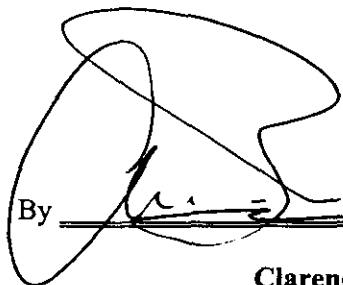
due to the close proximity of proposed allotment coordinates. In its desire to make a mutually exclusive scenario for filing, Cochise & DWAR moved so far from Sierra Vista that the proposal fails the requirement of mutual exclusivity to the original allotment. Exhibit II is an allocation study based on the allocation coordinates proposed by Cochise & DWAR for CH 267C3 at Tanque Verde. It is seen that the Tanque Verde coordinates are not mutually exclusive with the allotment coordinates for CH 269A at Sierra Vista, Arizona. The CH 269A coordinates represent the only licensed coordinates. To allow Cochise & DWAR to rely on the allocation coordinates for unbuilt CH 269C1 at Sierra Vista or unbuilt CH 267C3 at Corona De Tucson would allow the daisy chain process of jumping from community to community without constructing that the Commission has stated that it does not want to occur.

**THE COCHISE & DWAR COUNTERPROPOSAL VIOLATES THE FM FREEZE**

New petitions to amend the Table of Allotments are precluded during the pendency of MB Docket No. 05-210. The proposed allotment for CH 228C1 at Virden, NM is not mutually exclusive with the CCR Petition or any channel in the Cochise & DWAR counterproposal as seen on the attached allocation study, Exhibit III. The proposed allotment at Virden, NM should be summarily dismissed.

**CONCLUSION**

The foregoing was prepared on behalf of CCR-Sierra Vista IV, LLC by Clarence M. Beverage of Communications Technologies, Inc., Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By  \_\_\_\_\_

**Clarence M. Beverage**  
for Communications Technologies, Inc.  
Marlton, New Jersey

**SUBSCRIBED AND SWORN TO** before me,

this 4<sup>th</sup> day of October, 2005,

Esther G. Sperbeck, NOTARY PUBLIC

**ESTHER G. SPERBECK**  
**NOTARY PUBLIC OF NEW JERSEY**  
**MY COMMISSION EXPIRES OCT. 15, 2007**

# EXHIBIT I

## ALLOCATION STUDY PROPOSED CHANNEL 265A TANQUE VERDE, ARIZONA

FCC CDBS 09292005

Search of channel 265 (100.9 MHz Class A) at 32-20-00.5 N, 110-42-48.0 W.

CALL	CITY	ST CHN CL	DIST	SEP	BRNG CLEARANCE
	TANQUE VERDE	AZ 265 A	3.95 115.00	269.3	-111.1 MB Docket No. 05-245
KZMK	SIERRA VISTA	AZ 265 A	96.63 115.00	154.6	-18.4 License
	SIERRA VISTA	AZ 265 A	96.63 115.00	154.6	-18.4 Allotment
	CORONA DE TUSCON	AZ 267 C3	41.82 42.00	177.5	-0.2 Allotment
	SASABE	SO 266 B	124.34 125.00	219.5	-0.7 Allotment
KKYZ	CORONA DE TUCSON	AZ 267 C3	41.82 42.00	177.5	-0.2 CP
KSLX-FM	SCOTTSDALE	AZ 264 C	167.98 165.00	311.7	3.0
KSLX-FM	SCOTTSDALE	AZ 264 C	167.98 165.00	311.7	3.0
KJIK	DUNCAN	AZ 264 C1	144.38 133.00	64.3	11.4
KQMR	GLOBE	AZ 262 C	106.54 95.00	354.2	11.5
KQMR	GLOBE	AZ 262 C	106.99 95.00	352.5	12.0
KQMR	GLOBE	AZ 262 C	106.99 95.00	352.5	12.0
KJIK	DUNCAN	AZ 264 C1	167.51 133.00	59.7	34.5

# EXHIBIT II

## ALLOCATION STUDY PROPOSED CHANNEL 267C3 TANQUE VERDE, ARIZONA

FCC CDBS 09292005

Search of channel 267 (101.3 MHz Class C3) at 32-08-45.0 N, 110-46-56.0 W. •

CALL	CITY	ST CHN CL	DIST	SEP	BRNG	CLEARANCE
KKYZ	CORONA DE TUCSON	AZ 267 C3	22.57	153.00	158.4	-130.4 RM-10703 CP
BPH20021218ANF						
	AGUA PRIETA	SO 267 B	148.56	211.00	128.6	-62.4 ALLOTMENT
	SASABE	SO 266 B	104.49	145.00	224.0	-40.5 ALLOTMENT
	TANQUE VERDE	AZ 265 A	20.92	42.00	6.9	-21.1 MB DOCKET
NO. 05-245						
KKYZ	SIERRA VISTA	AZ 269 C1	63.15	76.00	149.2	-12.8 VACANT
ALLOTMENT						
KUAT-FM	TUCSON	AZ 213 C	30.54	31.00	11.9	-0.5 LICENSE
KZON	PHOENIX	AZ 268 C	178.00	176.00	318.1	2.0 LICENSE
KKYZ	SIERRA VISTA	AZ 269 C2	82.67	56.00	141.0	26.7 ALLOTMENT
C2						
	SASABE	SO 270 B	104.49	77.00	224.0	27.5 ALLOTMENT
KKYZ	SIERRA VISTA	AZ 269 A	82.67	42.00	141.0	40.7 LICENSE
KKYZ	SIERRA VISTA	AZ 269 A	82.67	42.00	141.0	40.7 ALLOTMENT A

\*Coordinates in Counter proposal to MB Docket No.05-245

EXHIBIT III

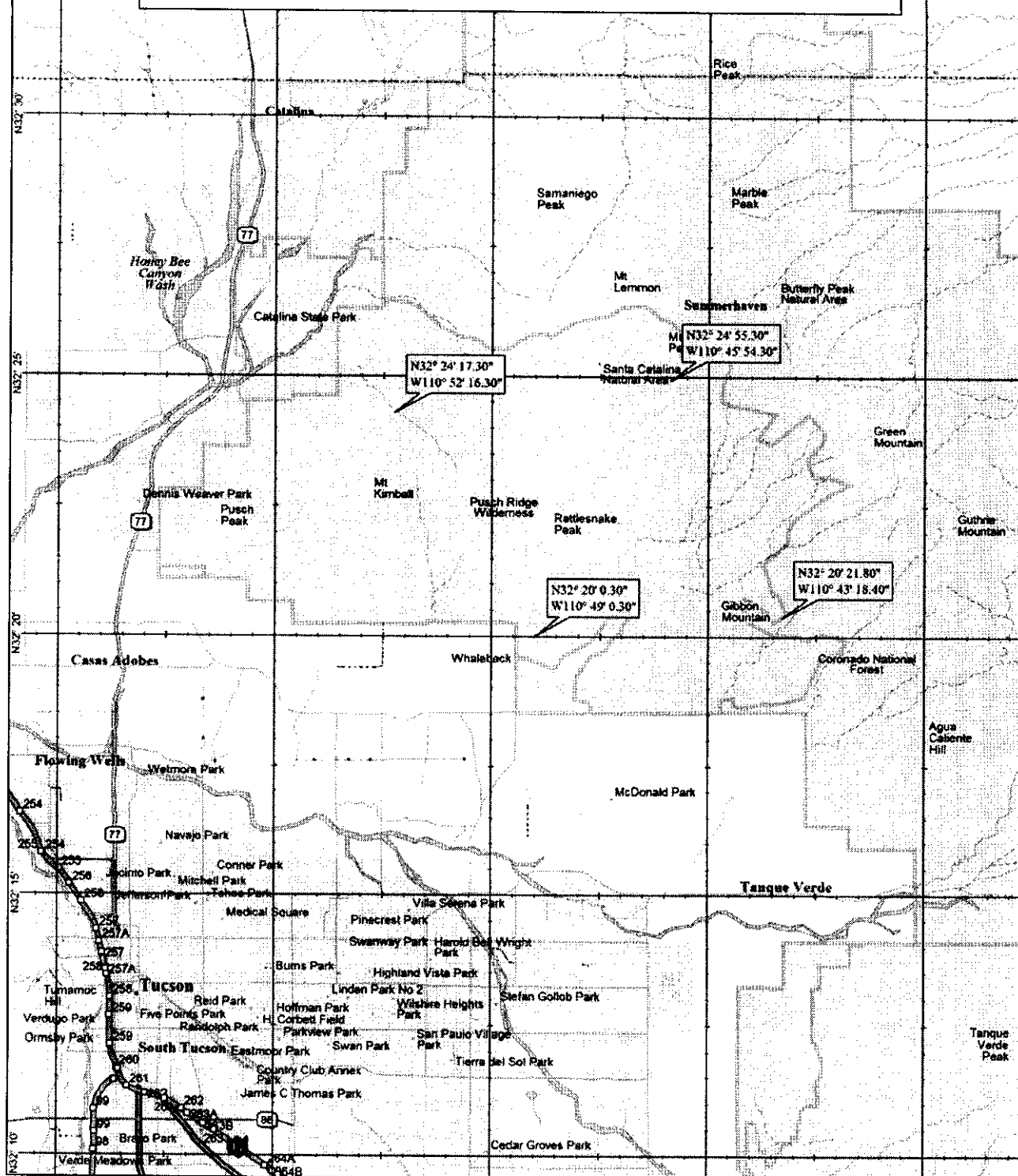
ALLOCATION STUDY PROPOSED CHANNEL 228C1  
VIRDEN, NEW MEXICO

FCC CDBS 09292005

Search of channel 228 (93.5 MHz Class C1) at 32-24-12.0 N, 108-53-59.0 W.

<u>CALL</u>	<u>CITY</u>	<u>ST CHN CL</u>	<u>DIST</u>	<u>SEP</u>	<u>BRNG</u>	<u>CLEARANCE</u>
KSNX	SHOW LOW	AZ 228 C2	206.62	224.00	334.4	-17.4
XHSCAFM	CANANEA	SO 227 C	205.02	209.00	223.5	-4.0
XHSCAFM	CANANEA	SO 227 C	205.02	209.00	223.5	-4.0
KRQQ	TUCSON	AZ 229 C	209.37	209.00	265.9	0.4
KSCQ	SILVER CITY	NM 225 C2	79.03	79.00	51.4	0.0
KSCQ	SILVER CITY	NM 225 C2	79.03	79.00	51.4	0.0
KRQQ	TUCSON	AZ 229 C	209.37	209.00	265.9	0.4
KXKQ	SAFFORD	AZ 231 C1	93.21	82.00	287.4	11.2
KXKQ	SAFFORD	AZ 231 C1	93.17	82.00	300.5	11.2
KSNX	SHOW LOW	AZ 228 C3	227.38	211.00	332.8	16.4

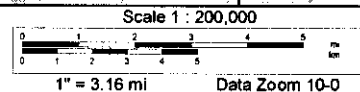
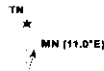
# FIGURE 1 FCC WIRELESS BUREAU SITES WITHIN THE PUSCH RIDGE WILDERNESS AREA BOUNDARY



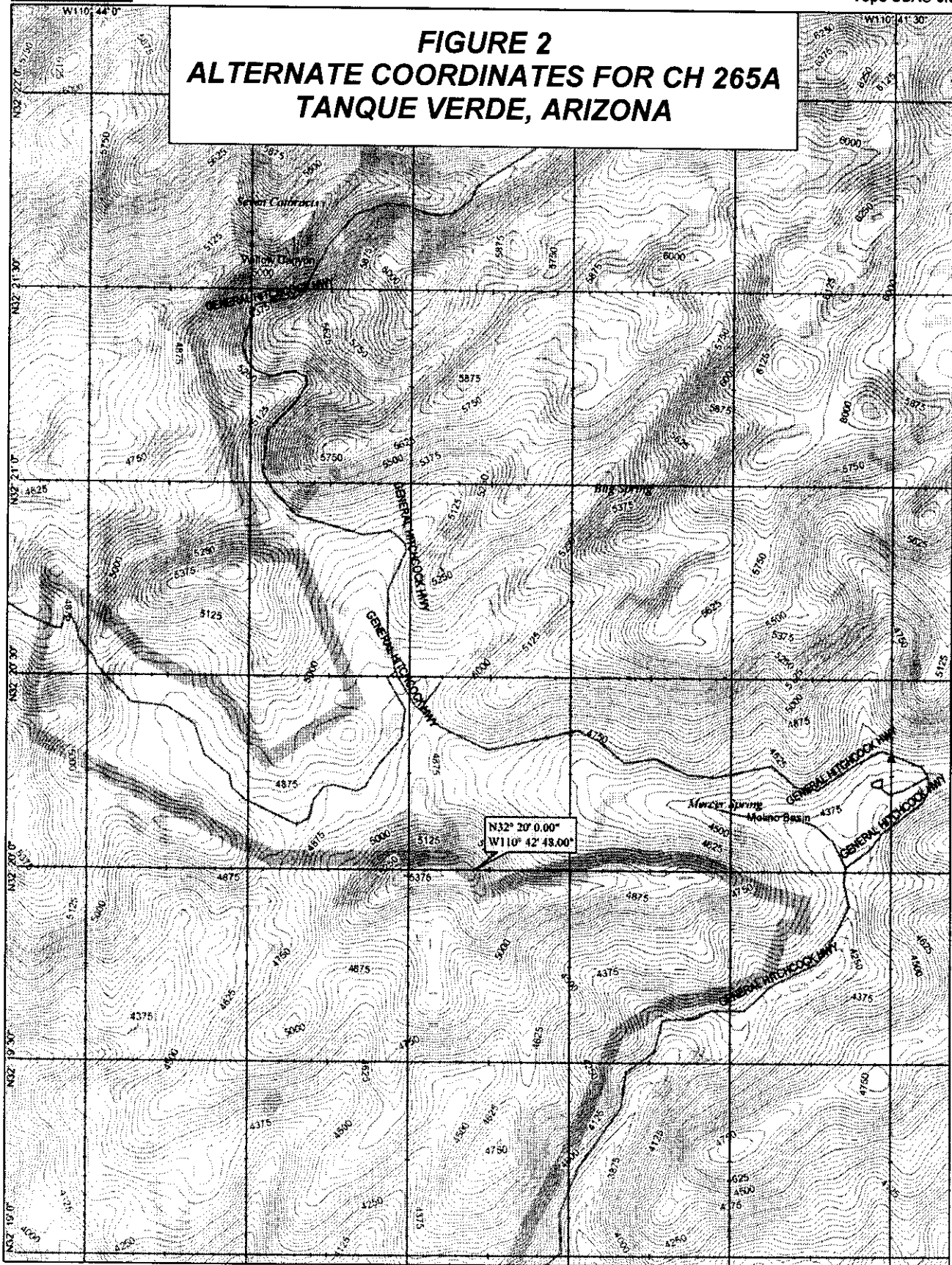
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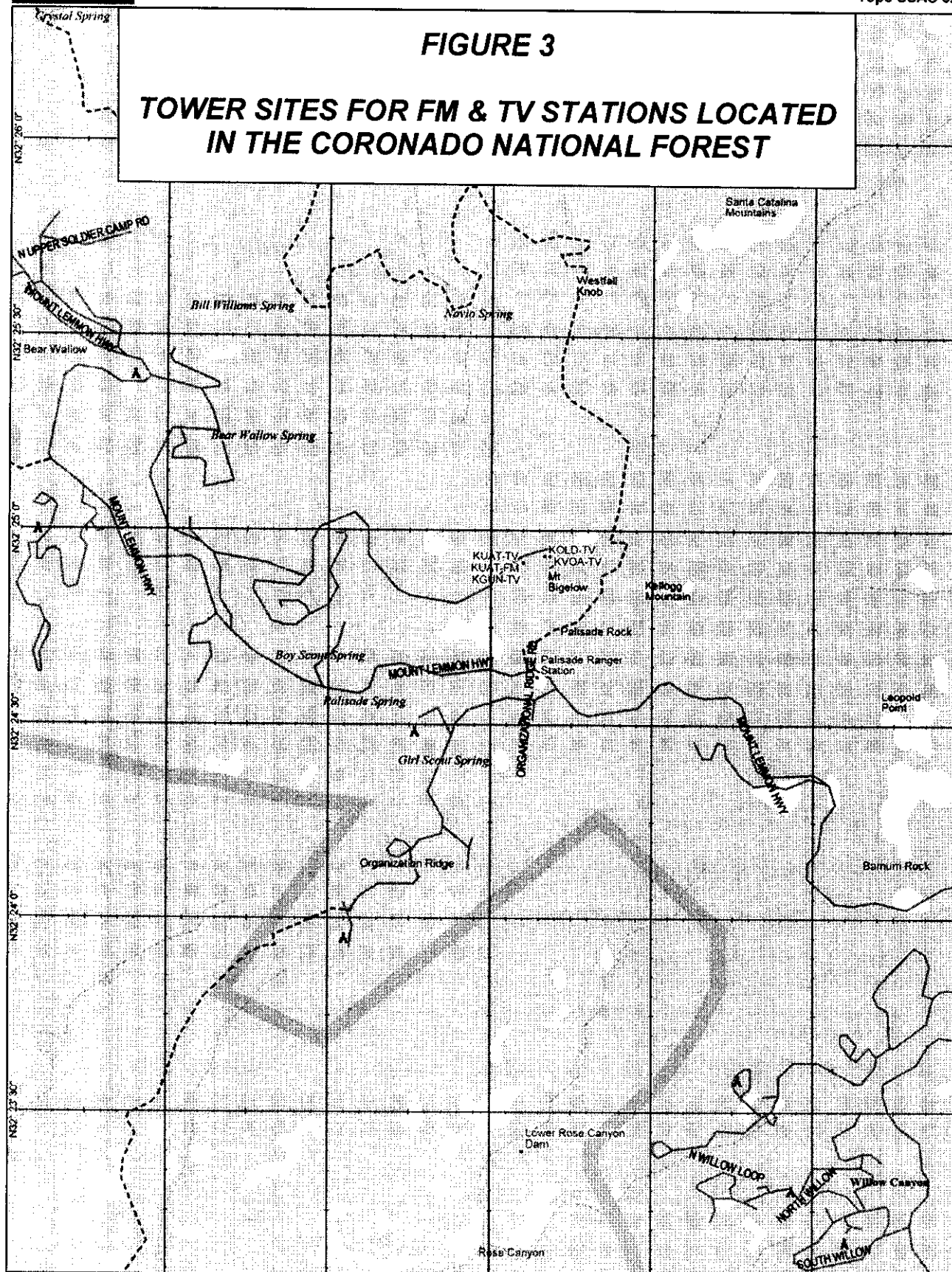


**FIGURE 2**  
**ALTERNATE COORDINATES FOR CH 265A**  
**TANQUE VERDE, ARIZONA**

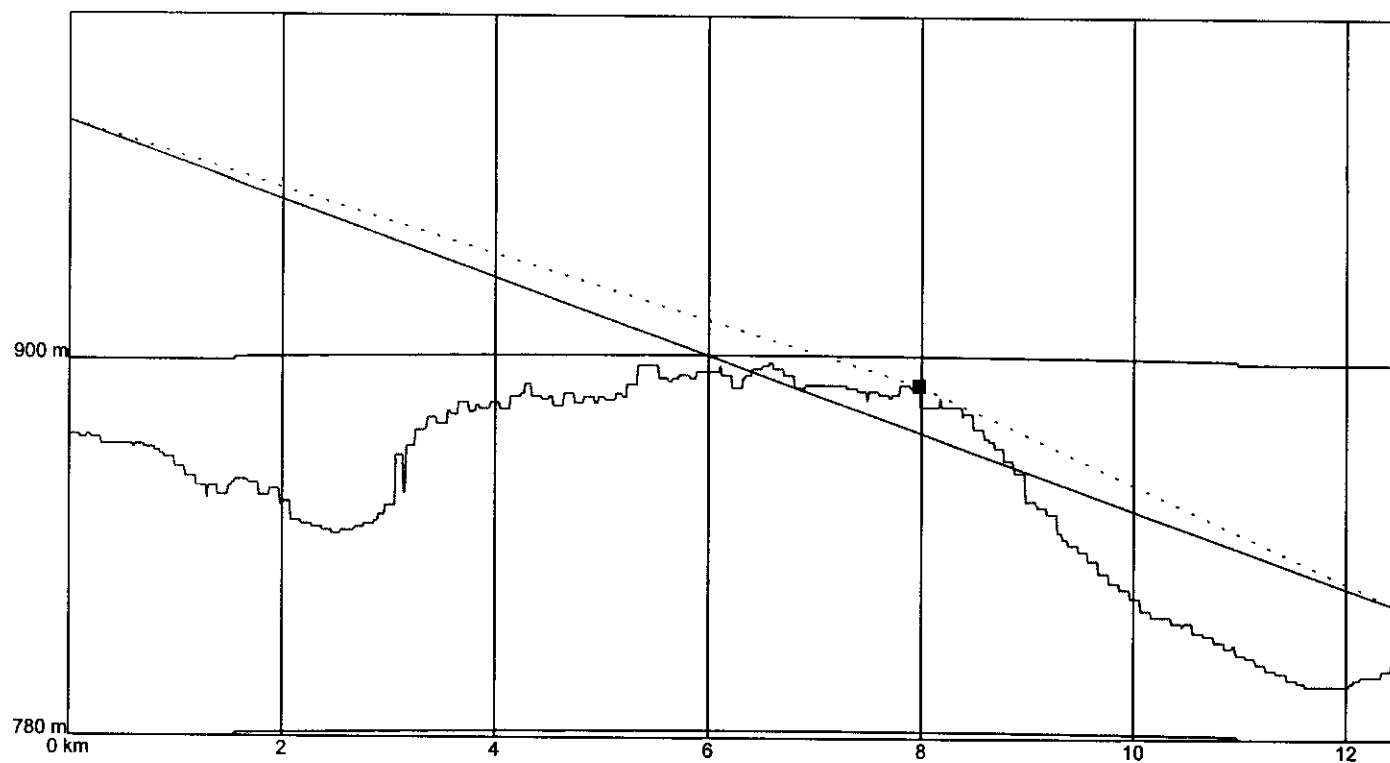


# FIGURE 3

## TOWER SITES FOR FM & TV STATIONS LOCATED IN THE CORONADO NATIONAL FOREST



# ComStudy 2 Path Profile



## TX

Lat: 32-08-45.0 N  
 Lon: 110-46-56.0 W  
 AMSL: 876 m  
 Tower AGL: 100 m

## RX

Lat: 32-15-05.9 N  
 Lon: 110-44-12.0 W  
 AMSL: 813 m  
 Tower AGL: 9 m

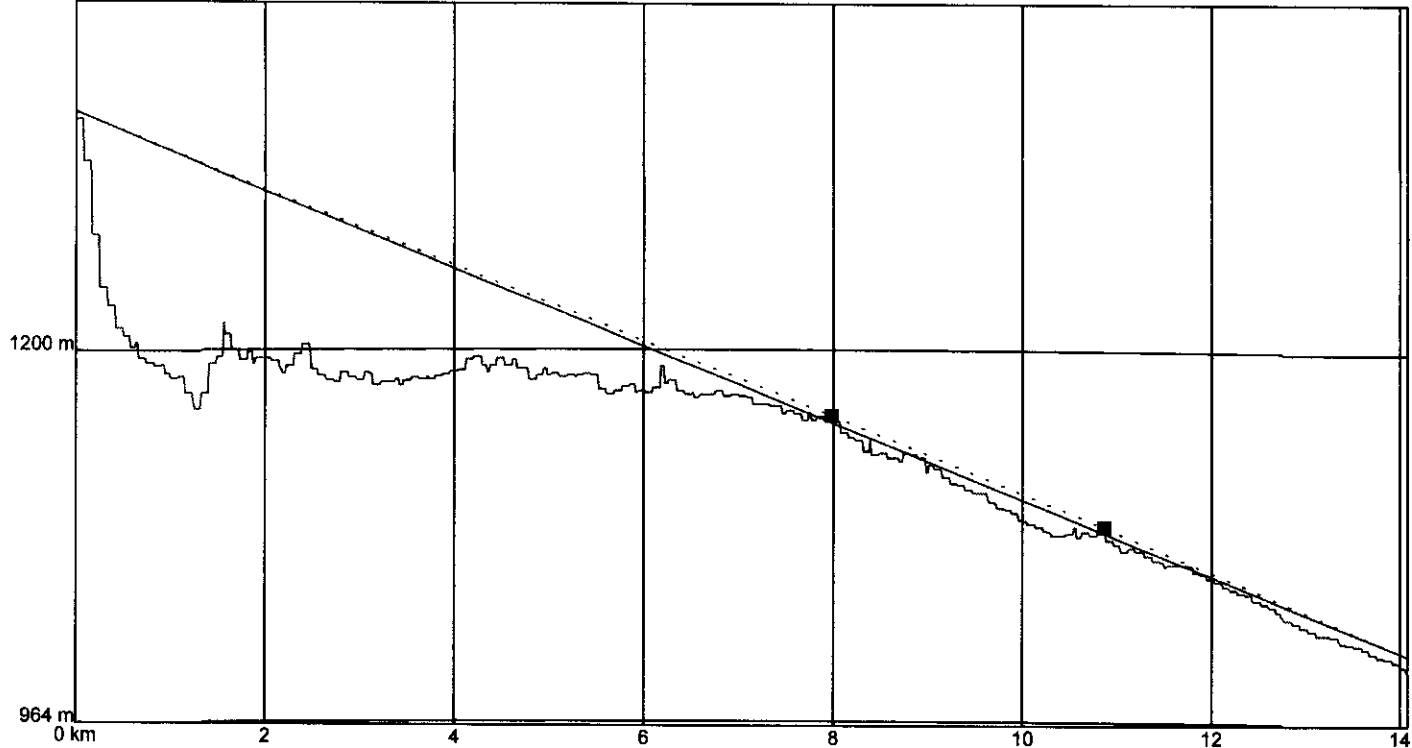
## Profile Info

Distance: 12.52 Km  
 Bearing: 20.00 deg  
 # of points: 1000  
 K value: 1.333  
 Frequency: 100.0000  
 Clearance: 0.6

## Losses

Base Loss: 103.5 dB  
 Fade Margin: N/A  
 Diffraction: 6.1 dB  
 Fresnel: 11.8 dB

ComStudy 2 Path Profile



**TX**

Lat: 31-55-39.0 N  
Lon: 110-37-57.0 W  
AMSL: 1346 m  
Tower AGL: 5 m

**RX**

Lat: 31-57-54.9 N  
Lon: 110-46-29.8 W  
AMSL: 999 m  
Tower AGL: 9 m

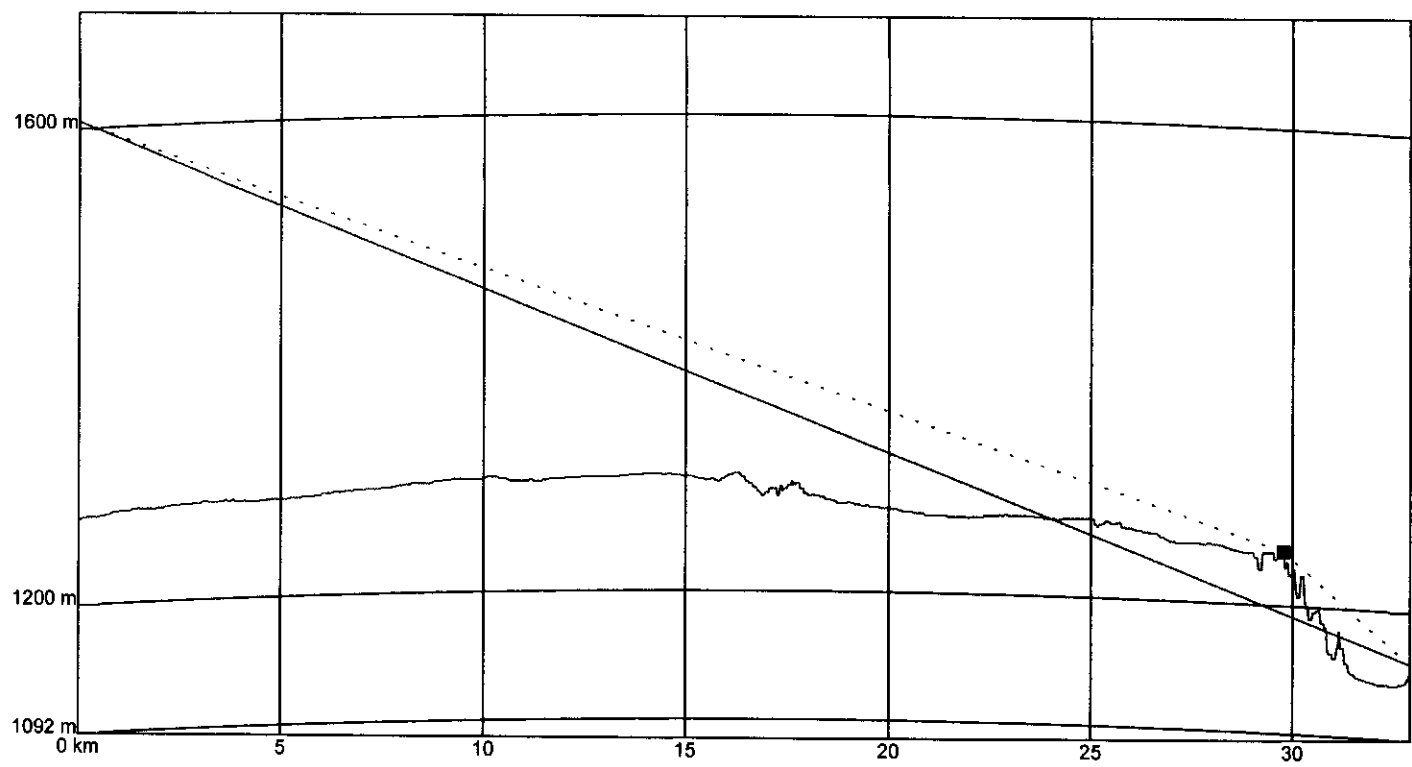
**Profile Info**

Distance: 14.08 Km  
Bearing: 287.39 deg  
# of points: 1000  
K value: 1.333  
Frequency: 100.0000  
Clearance: 0.6

**Losses**

Base Loss: 131.6 dB  
Fade Margin: N/A  
Diffraction: 12.1 dB  
Fresnel: 11.9 dB

ComStudy 2 Path Profile



**TX**

Lat: 32-24-12.0 N  
Lon: 108-53-59.0 W  
AMSL: 1272 m  
Tower AGL: 334 m

**RX**

Lat: 32-41-12.9 N  
Lon: 109-00-05.0 W  
AMSL: 1147 m  
Tower AGL: 9 m

**Profile Info**

Distance: 32.94 Km  
Bearing: 343.21 deg  
# of points 1000  
K value: 1.333  
Frequency: 100.0000  
Clearance: 0.6

**Losses**

Base Loss: 109.8 dB  
Fade Margin: N/A  
Diffraction: 6.3 dB  
Fresnel: 11.5 dB

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Title 43

- United States Code

- TITLE 43 - PUBLIC LANDS

- CHAPTER 35 - FEDERAL LAND POLICY AND MANAGEMENT

- SUBCHAPTER V - RIGHTS-OF-WAY

*U.S. Code as of: 01/22/02***Section 1761. Grant, issue, or renewal of rights-of-way****Related F****(a) Authorized purposes**

The Secretary, with respect to the public lands (including public lands, as defined in section 1702(e) of this title, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. 818)) and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for -

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act, including part 1

(FOOTNOTE 1) thereof (41 Stat. 1063, 16 U.S.C. 791a-825r).;

(FOOTNOTE 2)

(FOOTNOTE 1) So in original. Probably should be part 'I'.

Property IProperty I  
and DoProperty La

(FOOTNOTE 2) So in original. The period preceding the semicolon probably should not appear.

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

(b) Procedures applicable; administration

(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-to-way (FOOTNOTE 3) pursuant to this subchapter, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination, in accordance with the provisions of this subchapter, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(FOOTNOTE 3) So in original. Probably should be "right-of-way".

(3) The Secretary of Agriculture shall have the authority to administer all rights-of-way granted or issued under authority of previous Acts with respect to lands under the jurisdiction of the Secretary of Agriculture, including rights-of-way granted or issued pursuant to authority given to the Secretary of the Interior by such previous Acts.

(c) Permanent easement for water systems; issuance, preconditions, etc.

(1) Upon receipt of a written application pursuant to paragraph (2) of this subsection from an applicant meeting the requirements of this subsection, the Secretary of Agriculture shall issue a permanent easement, without a requirement for reimbursement, for a water system as described in subsection (a)(1) of this section,

traversing Federal lands within the National Forest System ('National Forest Lands'), constructed and in operation or placed into operation prior to October 21, 1976, if -

(A) the traversed National Forest lands are in a State where the appropriation doctrine governs the ownership of water rights;

(B) at the time of submission of the application the water system is used solely for agricultural irrigation or livestock watering purposes;

(C) the use served by the water system is not located solely on Federal lands;

(D) the originally constructed facilities comprising such system have been in substantially continuous operation without abandonment;

(E) the applicant has a valid existing right, established under applicable State law, for water to be conveyed by the water system;

(F) a recordable survey and other information concerning the location and characteristics of the system as necessary for proper management of National Forest lands is provided to the Secretary of Agriculture by the applicant for the easement; and

(G) the applicant submits such application on or before December 31, 1996.

(2) (A) Nothing in this subsection shall be construed as affecting any grants made by any previous Act. To the extent any such previous grant of right-of-way is a valid existing right, it shall remain in full force and effect unless an owner thereof notifies the Secretary of Agriculture that such owner elects to have a water system on such right-of-way governed by the provisions of this subsection and submits a written application for issuance of an easement pursuant to this subsection, in which case upon the issuance of an easement pursuant to this subsection such previous grant shall be deemed to have been relinquished and shall terminate.

(B) Easements issued under the authority of this subsection shall be fully transferable with all existing conditions and without the imposition of fees or new conditions or stipulations at the time of transfer. The holder shall notify the Secretary of Agriculture within sixty days of any address change of the holder or change in ownership of the facilities.

(C) Easements issued under the authority of this subsection shall include all changes or modifications to the original facilities in existence as of October 21, 1976, the date of enactment of this Act.

(D) Any future extension or enlargement of facilities after October 21, 1976, shall require the issuance of a separate authorization, not authorized under this subsection.

(3) (A) Except as otherwise provided in this subsection, the Secretary of Agriculture may terminate or suspend an easement issued pursuant to this subsection in accordance with the procedural and other provisions of section 1766 of this title. An easement issued pursuant to this subsection shall terminate if the water system for which such easement was issued is used for any purpose other than agricultural irrigation or livestock watering use. For purposes of subparagraph (D) of paragraph (1) of this subsection, non-use of a water system for agricultural irrigation or livestock watering purposes for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the facilities comprising such system.

(B) Nothing in this subsection shall be deemed to be an assertion

by the United States of any right or claim with regard to the reservation, acquisition, or use of water. Nothing in this subsection shall be deemed to confer on the Secretary of Agriculture any power or authority to regulate or control in any manner the appropriation, diversion, or use of water for any purpose (nor to diminish any such power or authority of such Secretary under applicable law) or to require the conveyance or transfer to the United States of any right or claim to the appropriation, diversion, or use of water.

(C) Except as otherwise provided in this subsection, all rights-of-way issued pursuant to this subsection are subject to all conditions and requirements of this Act.

(D) In the event a right-of-way issued pursuant to this subsection is allowed to deteriorate to the point of threatening persons or property and the holder of the right-of-way, after consultation with the Secretary of Agriculture, refuses to perform the repair and maintenance necessary to remove the threat to persons or property, the Secretary shall have the right to undertake such repair and maintenance on the right-of-way and to assess the holder for the costs of such repair and maintenance, regardless of whether the Secretary had required the holder to furnish a bond or other security pursuant to subsection (i) of this section.

(d) Rights-of-way on certain Federal lands

With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, part I of the Federal Power Act (16 U.S.C. 791a et seq.) which is located on lands subject to a reservation under section 24 of the Federal Power Act (16 U.S.C. 818) and which did not receive a permit, right-of-way or other approval under this section prior to October 24, 1992, no such permit, right-of-way, or other approval shall be required for continued operation, including continued operation pursuant to section 15 of the Federal Power Act (16 U.S.C. 808), of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation.

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**FOREST SERVICE HANDBOOK  
NATIONAL HEADQUARTERS (WO)  
WASHINGTON, DC**

**FSH 2709.11 - SPECIAL USES HANDBOOK**

**CHAPTER 90 - COMMUNICATIONS SITE MANAGEMENT**

**Amendment No.:** 2709.11-2004-4

**Effective Date:** October 19, 2004

**Duration:** This amendment is effective until superseded or removed.

**Approved:** FREDERICK L. NORBURY  
Associate Deputy Chief, NFS

**Date Approved:** 10/04/2004

**Posting Instructions:** Amendments are numbered consecutively by Handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this Handbook was 2709.11-2004-3 to 2709.11\_10.

<b>New Document</b>	2709.11_90	123 Pages
<b>Superseded Document(s) by Issuance Number and Effective Date</b>	2709.11_90 (Amendment 2709.11-2003-4, 08/14/2003)	90 Pages

**Digest:**

90.3 - Adds direction regarding situations in which the authorized officer may allow Forest Service free use of a non-governmental communications facility if it is the policy of the facility owner or facility manager to allow free use to all governmental entities.

90.4 - Adds a cross-reference to FSM 2704.34 concerning the authority to delegate to the District Ranger the responsibility for issuing a communications use authorization.

90.5 - Revises the definition of "Communications Site" to correct a technical error by changing the second sentence from "A communications site may be limited to a single communications facility, but most often encompasses more than one site." to "A communications site may be limited to a single communications facility, but most often encompasses more than one facility."

**FSH 2709.11 - SPECIAL USES HANDBOOK  
CHAPTER 90 - COMMUNICATIONS SITE MANAGEMENT**

This chapter provides direction on site management for a variety of communications uses (FSM 2728.1) on National Forest System lands. Typically, these communications uses occur at a designated site and include buildings, towers, and other improvements. Communications uses are divided into two broad categories: broadcast uses and non-broadcast uses. A description of the various types of communications uses on National Forest System lands is displayed in section 97, exhibit 01.

Exhibit 11 in section 97 provides additional direction for administering and determining rental fees for communications uses. This direction, in the form of questions and answers, was developed by the Forest Service and the Bureau of Land Management (BLM) during the agencies joint efforts to implement new rental fee policies from 1995 through 1997.

### **90.1 - Authority**

1. Title V, Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1761-1771). This act authorizes the use of National Forest System lands for telecommunications uses. Cite this authority on all authorizations issued for communications uses.

2. Telecommunications Act of 1996 (Pub. L. 104-104; 47 U.S.C. 332). Section 704(c) of this act (sec. 97, ex. 13) requires Federal agencies to facilitate the development and placement of telecommunications equipment on buildings and land they manage when placement does not conflict with the agency's mission or current or planned use of the property.

### **90.2 - Objectives**

The objectives of communications use management are to:

1. Collect fair market value for communications uses that occupy National Forest System lands.
2. Authorize communications uses that meet Forest land and resource management plan objectives.
3. Facilitate the orderly development of communications sites.
4. Provide a safe and high-quality communications environment.
5. Contribute to the telecommunications needs of the American public.

# DECLARATION

## DECLARATION

I, Stephanie Patton, am a legal assistant over the age of 18 and reside in the Commonwealth of Virginia. I do hereby testify, under penalty of perjury, to the following:

- (1) On Friday, September 30, 2005, I talked with Susan Ashley, an employee of the Animas Post Office, and confirm that I was provided the following information:
  - (a) The Animas Post Office serves the areas of Animas, Cotton City, Cloverdale, and Windmill. Animas does not have a system of town government, mayor, nor police officers. The majority of services for Animas come through the county and the town of Lordsburg.
- (2) On Friday, September 30, 2005, I talked with Karen Martinez, an employee of the Animas School District, and confirm that I was provided the following information:
  - (a) There are between 296 to 299 students in kindergarten through 12<sup>th</sup> grade in the Animas School District. The Animas School District provides service for a geographic area which includes students from Animas, Rodeo (~20 miles away), Hachita (~25 miles away), and Cotton City (~15 miles away).
- (3) On Friday, September 30, 2005, I talked with Priscilla Maxwell, an employee of the Hidalgo County Sheriff's Office, and confirm that I was provided the following information:
  - (a) The Hidalgo County Sheriff's Office provides police service to Animas. The sheriff's office receives its funding from the state of New Mexico. The fire service to Animas is initially paid for by Hidalgo County then is reimbursed by the state of New Mexico.
- (4) On Tuesday, October 4, 2005, I talked with an employee of Cotton City Grocery and confirm that I was provided the following information:
  - (a) The Cotton City Grocery serves the Animas area. Their customers are mainly people from Animas. The majority of people go to Lordsburg for their shopping needs.
- (5) On Tuesday, October 4, 2005, I talked with Glenda Mahan, an employee of the Animas Valley Clinic and confirm that I was provided the following information:
  - (a) The Animas Valley Clinic serves children attending the Animas Public Schools from areas such as Animas, Playas, and Rodeo. There are no other health facilities in the area. Concerning Animas, Glenda stated, "I wouldn't even call it a town." Glenda however stated the people in the area are close to each other.

Stephanie Patton  
Stephanie Patton

October 4, 2005  
Date